

Internal Revenue Service

District  
Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

Date: MAR 17 1988

No Protest  
Received  
4-26-88

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure 1.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 because you are a corporation.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[Redacted Signature]  
[Redacted Title]  
District Director

Enclosures: 3

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Enclosure I

Information submitted disclosed that you were incorporated on [REDACTED], under the laws of the State of [REDACTED]. Your purposes as set forth in the third article of your Articles of Incorporation are as follows:

Forthwith upon the creation of the Association the undersigned is creating a condominium under the provisions of Chapter [REDACTED] of the Revised Code of [REDACTED], known as "[REDACTED]," or "the Condominium," of the property described in Exhibit A hereto. The purposes for which the Association is formed are to be and to act as the unit owners' association for the Condominium, to provide for the maintenance, preservation and architectural control of the property of the Condominium, and to promote the health, safety, and welfare of the residents of the Condominium, and for these purposes:

- (1) To exercise all of the powers and privileges and perform all the duties and obligations of the Association as set forth in these Articles of Incorporation, and the Declaration and By-Laws of the Condominium ("the Articles," "the Declaration," and "the By-Laws," respectively);
- (2) To fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration, and pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association;
- (3) To acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (4) To borrow money to fulfil its purpose;
- (5) To administer and enforce terms, conditions, covenants, the restrictions and regulations upon, under, and subject to which the Condominium or any part thereof may now or hereafter be used, and fix and provide any such terms, conditions, covenants, restrictions, and regulations, and administer, enforce, alter, amend, change, add to, extend, waive, or terminate, in whole or in part, any of the same;
- (6) To provide the residents and unit owners of the Condominium with (a) normal utility services not separately provided to individual units, (b) services supplemental to municipal services, and (c) common areas maintenance service;

- (7) To be, function, and act as the unit owners' association of the Condominium, under the provisions of Chapter [REDACTED] of the Revised Code of [REDACTED], and delegate such authority as it desires to a managing agent;
- (8) To have and exercise any and all powers, rights, and privileges which a corporation organized under Chapter [REDACTED] may now or hereafter have or exercise by law; and
- (9) To take any action necessary, expedient, incidental, appropriate, or convenient to the carrying out of the foregoing purposes.

The Association shall not do any act or enter into any agreement or enter into any transaction in a manner which would violate any provision of Chapter [REDACTED] of the [REDACTED] Revised Code or the provisions of these Articles, the Declaration, or the By-Laws.

Your application for recognition of exemption and correspondence discloses that you administer and enforce covenants for preserving the architecture and appearance of the development, and to own and maintain common green areas, parking areas, and driveways. The geographic area is zoned suburban office, with the surrounding area zoned for commercial use. Your area consists of [REDACTED] office buildings, [REDACTED] parking spaces, with an entrance way leading off of [REDACTED] Road. Your common green area is comprised of the grass and shrubbery surrounding the entire complex. The application further discloses that the units are used for conducting business only, and in no way are the units to be used for residential purposes at any time.

Your organization maintains [REDACTED] office buildings, which are owned by your members, that are utilized by customers doing business with the owner/occupants of the complex. Thus, the activities of the organization serve the private interests of the owners as opposed to the general public's interest.

Section 501(c)(4) of the Code provides, in part, that "civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare" qualify for exemption under section 501(c)(4).

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations states, in part, that "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements...."

Rev. Rul. 74-99, 1974-1 C.B. 131, provides that in order to qualify for exemption under section 501(c)(4), a homeowners' association:

- (1) Must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof;
- (2) It must not conduct activities to the exterior maintenance of private residences; and
- (3) It owns and maintains only common areas or facilities such as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners' association.

Your organization does not engage in activities that benefit a community comprising a geographical unit, nor does it own and maintain common areas to be used or enjoyed by the general public.

Rev. Rul. 74-17, 1974-1 C.B. 130, provides that an organization formed by the unit owners of a condominium housing project for the management, maintenance, and care of the common areas of the project, as defined by State Statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4).

Similar to the organization described in this revenue ruling, your organization was formed to provide for the maintenance, preservation and care of the common areas. Furthermore, it is described as a condominium, and as such, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners.

It has been held that where the primary economic benefit from an organization is limited to that organization's members, the organization is not operated exclusively for the social welfare within the meaning of the statute. Consumer Farmer Milk Coop. v. Commissioner, 186 F. 2d 68 (CA2; 1950), affirming 13 Insurance Fund, 54 T.C. 1325, 1333 (1970).

Your organization stated in a letter dated [REDACTED], that you feel the organization should be granted exemption because you were not organized with a profit motive in mind, and that you accumulate funds from monthly condominium fees only for major repairs and maintenance. Furthermore, the activities are directed to the general improvement of the tenants business conditions as a whole, and that you feel it is not the intent of Congress to impose a taxable situation on an organization with no profit motive.

